smuggling into Gaza and to prevent other criminal acts.

We also discussed the upcoming Egyptian Presidential elections. President Mubarak has asked his legislature for a change in the Constitution to allow multiple candidates to run for the Presidency. This is an important step toward full democracy. I applaud his efforts. I am disappointed, however, by reports that the Constitutional amendment just approved by Egypt's upper house requires Presidential candidates to meet certain conditions to win a place on the ballot. It is widely believed these regulations will prevent any serious contenders from running for President. In short, unless this amendment is modified, its final approval will practically guarantee the ruling party will select its own token competitors and continue its domination of the Presidency.

Meaningful reform means free and fair elections. Opposition candidates must be able to declare their candidacy freely. They must be allowed to broadcast their message through the media. And they must be permitted to acquire the resources necessary to run a genuine campaign.

Jailing opposition candidates, such as Ayman Nour, whom I had the opportunity to meet with in his apartment, and who recently declared from prison his intention to seek the Presidency, undermines the true meaning of democracy, and it undermines the people's faith that the Government is working on their behalf.

Egypt has been a close ally and good friend of the United States, but it still has a long way to go on the path toward political reform. After my meeting with President Mubarak, I held talks with Prime Minister Ahmed Nazif. He is pushing strong economic reforms throughout the country. He is lowering taxes and lowering other economic barriers, stripping away unnecessary regulations, and it is working.

According to the Prime Minister, the public sector used to contribute 70 percent to the GDP and the private sector 30 percent. Now those numbers are reversed, with the private sector contributing 70 percent and the public sector 30 percent. The economy is growing.

Lowering taxes and breaking down these barriers to opportunity are the keys to prosperity. It is gratifying to see this basic principle being embraced around the world. After failed experiments in socialism, as well as nationalism, Egypt appears to finally be embracing the power of free markets.

I am hopeful that as economic opportunity flourishes, the allure of extremism will fade, and the people and the leadership will be inspired to secure ever greater political freedoms.

While in Cairo, my group and I also visited the El Gallaa Maternity Teaching Hospital—the largest of its kind in the region. It is a large public teaching hospital. Over 20,000 babies are born there each year.

As I toured the hospital, I had the opportunity to meet with Egyptian doctors and nurses and other health professionals. I was also taken to the pediatric intensive care unit where dedicated health professionals worked to keep premature babies and at-risk newborns healthy. Their determination was inspiring, especially surrounded as they were by less-than-ideal conditions in downtown Cairo.

All in all, I came away from my stop in Egypt convinced that this historic country has the potential to set a positive example for the rest of the Middle East, and it is doing so. Egypt has been a trusted partner in the Middle East peace process and an important ally in the war on terrorism.

The United States must continue to promote democracy and freedom around the world.

As Egypt embraces these reforms, I am confident our two countries can form a stronger and more dependable relationship. I am confident that together we can achieve peace, security, and prosperity for the people of the Middle East.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from South Carolina.

JUDICIAL NOMINATIONS

Mr. DEMINT. Mr. President, in January of this year, I stood in this very Chamber, placed one hand on the Bible, and raised the other hand. In taking my oath of office, I made a simple pledge to uphold the Constitution of the United States of America. However, only 4 months later—because of the partisanship of some—I am prevented from fulfilling my oath.

It is interesting to observe what the Constitution requires of the Senate and what it does not. Nowhere does it say that Congress must pass new laws. But it does specify Senators must ''advise and consent'' on the President's judicial nominees.

How can I perform my constitutionally mandated duties to advise and consent without the ability to vote on the nominees sent to us by the President? How can I represent the people of South Carolina, who elected me to serve their interests, without the ability to vote yes or no?

Today, 41 Senators are preventing a bipartisan majority from carrying out the duty we were elected to fulfill. This is outrageous.

The President of the United States is given the authority, under the Constitution, to choose his own nominees. We have an obligation to vote on those nominees. Forty-one Senators are trying to thwart the will of the American people and the Constitution.

Beginning in 2003, Democrats used the filibuster to block up-or-down votes on 10 nominations to the Federal appeals courts. All had bipartisan, majority support. Do not be fooled by the misinformation of a few. Never in history has a judicial nominee with clear majority support been denied confirmation due to a filibuster.

Throughout my campaign, and each time I have been home this year, folks in South Carolina have told me how furious they are that the President's nominees are being denied a vote. Democrats have chosen to throw 200 years of tradition out the window by refusing to give judicial nominees a vote, and Americans are simply tired of the partisan obstruction.

Before I was elected, I said the Senate had become a ''graveyard of good ideas'' due to partisan liberal obstruction. Unfortunately, it has now become a ''graveyard of good nominees,'' such as Janice Rogers Brown.

California Supreme Court Justice Brown was nominated to the DC Circuit by President Bush in 2003. The first African American to serve on the California high court, Justice Brown received public support from 76 percent of California voters and is widely respected as a leading intellect on the bench. She has been unanimously voted as ''well qualified'' by the American Bar Association, which has been described by those who oppose her nomination as the ''gold standard'' of judicial ratings.

The daughter of sharecroppers, Justice Brown was born in Greenville, AL, in 1949. During her childhood, she attended segregated schools and came of age in the midst of Jim Crow policies in the South.

She has dedicated 24 years to public service, serving as legal affairs secretary to California Governor Pete Wilson; deputy secretary and general counsel for the California Business, Transportation, and Housing Agency; deputy attorney general in the Office of the California Attorney General; and as deputy legislative counsel in the California Legislative Counsel Bureau.

Just what is it that opponents of Justice Brown claim is their reason to deny her a fair vote? They obviously could not attack her experience or her character or her education or her intelligence, which are all impeccable.

Instead, they have used the political equivalent of a desperate ''Hail Mary Pass.'' They labeled Justice Brown as ''out of the mainstream.'' Really? Out of the mainstream?

Were three-quarters of Californians out of the mainstream when they elected her overwhelmingly to the State supreme court? She was elected by the largest margin of any of the judges up for retention that year.

Despite the claims of her opponents, her record demonstrates a commitment to interpreting the law, not legislating from the bench.

If the obstructionist Senators who are vehemently opposed to her nomination feel so strongly that she is out of the mainstream, then they should put their money where their mouth is and come down to this floor and make their arguments against her nomination, then allow all of us to draw our own conclusions and cast our vote.

If Justice Brown is so truly unqualified, then surely her opponents would

be confident of convincing a majority that this is the case. Otherwise, they are simply smearing the integrity of a highly respected jurist in order to score political points against the President at the expense of vandalizing the Constitution.

One of my goals as a Senator is to confirm highly qualified judges by ensuring timely up-or-down votes for all nominees no matter who is President, no matter which party is in the majority. That is my commitment, and I have encouraged Senator FRIST to consider all options, including the constitutional option, to end the undemocratic blockade of judicial nominees. Senators were elected to advise and consent, not to grandstand and obstruct.

I would like to say something to my colleagues across the aisle. There is a reason George W. Bush was elected to serve as President of the United States. It is because the majority of Americans trusted him to nominate judges.

There is a reason the American people elected a majority of Republicans to the Senate. They trusted our judgment to vote on judicial nominees.

There is a reason the Democratic Party is in the minority in Congress. It is because the American people did not trust them to make these decisions.

It is not a trivial matter. The issue of judicial nominations was at the forefront of every Senate campaign in the last two cycles. Voters across our Nation witnessed the obstruction of the Democrats over the last 4 years, and they rendered their judgment at the polls.

In 2002, they returned the Republicans to the majority in the Senate. Then, after 2 years of unprecedented and, in my opinion, unconstitutional denials of simple votes on judicial nominees, Americans elected an even larger majority of Republicans. In fact, the Democrat leader, former Senator Tom Daschle, was defeated by my colleague, Senator JOHN THUNE, in large part due to his high-profile obstruction of judicial nominees.

In my own campaign, I spoke frequently about the need to give every nominee a fair up-or-down vote. It was consistently the main issue voters brought up with me one-on-one.

Now that the American people have clearly spoken, by democratically electing a Republican President and a Republican majority in the Senate, 41 Senators are attempting to deny the will of the people. Forty-one Senators believe they know better than the majority of Americans. Forty-one Senators seem to think the elections and constitutional duties we have do not matter. What matters to these 41 Senators is petty partisan politics.

This temper tantrum must end. The Democrats must accept the judgment of the American people. They cannot disregard election results simply because things did not go their way.

Now let me speak to my own party's leadership. It is time for the Republican Party to lead, as Americans have elected us to do. We were not sent to the Senate as a majority to quibble about process and procedure. We were entrusted to carry out the duties laid out in the Constitution.

We ran on a platform of ideas to secure America's future, and the Nation largely agreed with our vision. We also ran on the need to give the President's nominees a fair up-or-down vote. The Senate Republican majority must stand up for the Americans who elected us. We must have the courage and conviction to uphold the Constitution and end the partisan obstruction. The time to act is now.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I am pleased to take the floor again on the matter of judicial nominations. As the emotions and politics of this issue keep building up, it is important we not lose sight of what this is all about. We have all heard the grim, little joke about the doctor who said: The operation was a complete success, but the patient died.

Sometimes we get so caught up in process that we ignore the reasons we are here in the first place: to achieve an outcome for the American people to get things done, to make a difference.

The outcome the people want, the outcome the President deserves, and the outcome the Constitution demands is an up-or-down vote—a simple up-or-down vote—on each of the appointments the President has submitted to us.

A couple years ago, I stood right over there, in front of that desk, and swore an oath to the Constitution of the United States of America. The Constitution directs each Senator to ''advise and consent'' on judicial appointments by the President, not to advise and obstruct, not to advise and block, but simply advise and consent—which simply means, and has always meant in the history of this country, up until last year, the opportunity for an up-or-down vote.

If you ask me, the term ''nuclear option'' belongs to the tactics taken by the minority, unfortunately, in the last 2 years. I would say they are treading on the traditions of this body, the balance of power between the branches, and the Constitution that we are sworn to uphold.

As the Bible says, what you sow, you will reap. When some in the minority decide to flaunt the historical procedures and understandings of this body, they should not be weeping and wailing and gnashing their teeth when the majority steps up to restore—to restore—200-plus years of accepted practice in this body, which is an up-or-down vote on judicial nominees once they have passed through committee. If the minority is feeling injured, they brought it on themselves.

Mr. President, I want to illustrate what a dramatic departure from historical precedent some in the minority have embarked upon in the last year when 10 of the President's judicial nominees were filibustered. For the first time, 10 circuit court nominees, at the level right below the Supreme Court, were filibustered.

Just look back a few years to the nomination of Clarence Thomas to the Supreme Court in 1991. It was a media circus, riven with charges, accusations, and controversy. Clarence Thomas was confirmed with a vote of 52 to 48. If the Democrats had wanted to defeat him, they simply could have filibustered his nomination. But they did not.

They could have filibustered his confirmation, but they did not. Did they fail to do so because they simply wanted to be nice? No. It is fair to state that they didn't filibuster because at that time, in 1991, it wasn't even conceivable, it wasn't in the history and tradition of this body that nominees who get through committee or to the floor would fail to get an up-or-down vote, 52 to 48. Have no doubt about it, if what is going on today was going on then, Clarence Thomas would have been filibustered. It did not happen. At that time, my colleagues did the right thing. They honored two centuries of tradition and allowed him an up-or-down vote.

I have done some quick research. Of the 109 Justices of the Supreme Court, my staff counted 55 Supreme Court Justices who could have been defeated if one of the parties had adopted the nuclear option, the filibustering of nominees, now employed by some in the Senate minority. Half of the Supreme Court Justices in our Nation's history might never have served. Who could that have cost us? Benjamin Cardozo, nominated by President Hoover, who gave us proximate cause, a cornerstone of today's tort law. Every college kid in America, including me, read Cardozo's opinion. How about Justice Marshall Harlan, appointed by President Hayes. He was the lone dissenter in Plessy v. Ferguson which upheld segregation policies. Fortunately, we did not force Justices Cardozo or Harlan or other Justices to overcome a partisan filibuster. It was not done. In fact, not only did we not filibuster the other party's nominees, we often elevated them, as was the case with Harlan Fiske Stone, who was appointed by a conservative President, Calvin Coolidge, and then elevated to Chief Justice by Franklin D. Roosevelt.

I could go on. Does anybody in this Chamber doubt in today's environment that William O. Douglas would never have made it to the Supreme Court, that his nomination would have been filibustered? Does anyone in this Chamber doubt for a moment today that Justices Antonin Scalia and William Rehnquist would not have a chance to serve on the Supreme Court because of a filibuster?

We have to think about the consequences of this dangerous precedent that unlimited debate be used to deprive the whole Senate of an up-or-

down vote. The consequences are that individuals with strong opinions—and they may be liberal or conservative—and great intellect would not have an up-or-down vote.

There has been an ebb and flow in American politics.

The Bible says there is a time for every season. There are Republican Presidents. There are Democratic Presidents. There is ultimately a balance. What is happening today, what happened last year with the unprecedented filibustering of judicial nominees was an attempt to change the Constitution, to require a supermajority for Supreme Court and circuit court nominees. We are changing the flow, changing the balance. We are getting rid of and will deprive this Nation of people with great intellect and passion because they won't be able to get past the roadblock of the minority.

The caution I hope some in the minority will take to heart is, what happens when the shoe is on the other foot. How would they feel if a future Democratic President's nominees were treated in the same fashion? In this body, we have to live with the precedents we set. The whole concept of due process is about guaranteeing a set of procedures which reach a fair outcome. It is not about guaranteeing one particular outcome.

Some in the minority are so bent on defeating a few of the President's nominees that they will distort the process to achieve the outcome. They will distort precedent and tradition. They will distort what has given us a balance of great intellect and passion and great minds on the Supreme Court. We will lose that. That would be a terrible thing.

We are stewards not only of government but of the Constitution. It is our solemn oath to maintain the orderly completion of the Senate's business, specifically the fulfillment of our constitutional responsibility. Today, we are on the cusp of having to assert the constitutional option. I hope it will not come to that.

Now I hear rhetoric from some Members of the minority that they are prepared to compound their error by killing the remainder of the jobs agenda that we are ready to pass in the Senate. The National Association of Manufacturers said this week that passage of the jobs agenda items—including the highway bill, the Energy bill, the asbestos reform bill, and telecom rewrite—would be a $1 trillion jolt to the American economy, to the U.S. manufacturing industry. Any Senator from States that don't need manufacturing jobs should feel free to object.

We need to focus not on the process but the result. I have a responsibility to advise and consent on the appellate judges the President has submitted. I will exercise that responsibility whether there be a Democratic President or a Republican President. I will look to their qualifications and then give them what they deserve: an up-or-down vote.

If need be, I support my leadership taking necessary steps to allow me to reach that constitutional decision with a simple up-or-down vote. That is all we are asking for.

I yield the floor.

The PRESIDING OFFICER. The majority whip is recognized.

VACANCIES ON THE SIXTH CIRCUIT

Mr. MCCONNELL. Mr. President, for the last 4 years, I have taken to the Senate floor from time to time to decry the crushing burden under which the Sixth Circuit Court of Appeals operates. The year has changed, but one seemingly immutable fact remains: The Sixth Circuit is the slowest judicial circuit in the country by far.

The Sixth Circuit has 16 seats. It covers Michigan, Ohio, Kentucky, and Tennessee, with a population of over 30 million people. For the last 3 years, the Sixth Circuit has been trying to function with 25 percent of its seats empty. Twenty-five percent of the Sixth Circuit is vacant. The vacancy rate is, as it has been for much of this dispute, the highest of any circuit in the Nation.

Not surprisingly, the judicial conference has declared all four of these vacant seats to be judicial emergencies. According to the Administrative Office of the Courts, last year, as the year before it, the Sixth Circuit was a full 60 percent behind the national average. According to AOC, the national average for disposing of an appeal is 10½ months, but in the Sixth Circuit, it takes almost 17 months to decide an appeal, 16.8 months. That means that in other circuits, if you file your appeal at the beginning of the year, you get your decision around Halloween. But in the Sixth Circuit, if you file your appeal at the same time, you get your decision after the following Memorial Day, over a half a year later.

As the obstruction drags on year after year after year, things have gone from bad to worse. In 2001 and 2002, the Sixth Circuit was also the slowest circuit in the country. In those years, the average time for decision in the Sixth Circuit was 15.3 and 16 months respectively. In 2003, the average length of time for decision in the Sixth Circuit jumped to almost 17 months, 16.8—again, the slowest in the country.

I guess things have now hit rock bottom because the AOC reports that last year, 2004, the Sixth Circuit suffered from the same delay, almost 17 months, 16.8. Yet again, it was the slowest circuit in the Nation.

We all know the old saying that justice delayed is justice denied. The 30 million residents of the Sixth Circuit have been denied justice due to the continued obstruction of Sixth Circuit nominees by our Democratic colleagues.

What is the reason for this sorry state of affairs? An intradelegation spat from years ago when a quarter of the current Senate wasn't even here, nor was the current President. This dispute drags on year after year after year. I don't know who started it. I do know that with respect to nominees not getting hearings, the Democrats do not have a monopoly on disappointment. I also know that the obstruction that some of my colleagues are practicing on the Sixth Circuit is out of proportion to any alleged grievance.

My Democratic colleagues continue to block four Sixth Circuit nominees from Michigan: Henry Saad, David McKeague, Richard Griffin, and Susan Neilson. They are also blocking three district court nominees: Thomas Ludington, Dan Ryan, and Sean Cox. In fact, no Federal judges from Michigan have been confirmed during the Bush administration. Of the seven vacancies the Democrats refuse to let the Senate fill, five of the seats were not even involved in this dispute. Let me repeat that. Of the seven vacancies the Democrats from Michigan will not let be filled, five of the seven were not even involved in whatever this ancient dispute was.

President Clinton never nominated anyone to the seat to which Henry Saad was nominated. The seat to which David McKeague was nominated did not even become vacant until the current Bush administration on August 15 of 2001, and the three district court seats that are being blocked are not involved in the dispute, either. So five of the seven seats had absolutely nothing to do whatever with this dispute that went back to the Clinton years.

What the Michigan Senators are doing is holding up one-fourth of an entire circuit in crisis, along with three district court seats, because of internal disputes about two seats, the genesis of which occurred years and years ago. This is an absolutely embarrassing situation.

What are our friends from Michigan demanding in order to lift the blockade? They want to pick circuit court appointments. Let's get back to first principles. As much as they would like, Democratic Senators do not get to pick circuit court judges in Republican administrations. In fact, as much as we would like on this side of the aisle, Republican Senators do not get to pick circuit court judges in Republican administrations. In short, circuit court appointments are not Senatorial picks. Article II, section 2, of the Constitution clearly provides that the President and the President alone nominates judges. It then adds that the Senate is to provide its advice and consent to the nominations the President has made. By tradition, the President may consult with Senators if he chooses, but the tradition of consultation does not transform individual Senators into co-Presidents. We have elections for that, and President Bush has won the last two.

Finally, the Democrats have recently indicated that they will afford three of the circuit nominees an up-or-down